

# LEGAL ALERT

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## The New Enterprise Registration Process

### Introduction

The World Bank Group recently ranked Lao PDR as one of the most complicated destinations to start and operate a business. This served as a stimulus for Lao PDR to revisit one of the key components of its investment environment, namely, the difficulties in the formation of a Lao enterprise. Recent laws and regulations reflect the eagerness of the Lao government to accommodate improvements to the enterprise registration process ("ERP") into a more streamlined and less complicated process. Nonetheless, it is undeniable that the improved ERP, which came into effect from 1 February 2019, albeit comprising of several plausible features is still in its infancy.

### Criticisms against the Previous Process

The complication with establishing a company in Lao PDR is predominantly rooted in the number of authorities involved, the number of formalities required and the lengthy process in general. The issues are recognised and accepted by the Ministry of Industry and Commerce ("MOIC"), who is the main authority tasked with handling and supervising the ERP. MOIC has admitted that the previous process has an average timeline of 174 days and can take up to 228 days to complete. It has been noted that in the process of establishing a company in general business, several governmental offices are assigned to oversee the different aspects of the process separately. The lack of regulatory timeline imposed on them in processing the relevant works under their jurisdiction compounds the issue by adding an element of unpredictability into the system.

### The Regulatory Development

On 2 February 2018, the Prime Minister of Lao PDR issued Order No. 02/PMO on Improvement of Regulations and Coordination Mechanism for Doing Business in Lao PDR ("the Order") with the objective of improving the investment environment, promoting foreign investment, and achieving national development goals. The MOIC was tasked with revising regulations to simplify and expedite the ERP. Since then, especially towards the end of 2018, the MOIC and other relevant governmental agencies have taken several actions to accommodate the direction given in the Order. This includes the introduction of a series of new and amended regulatory instruments affecting the ERP.

### The New Enterprise Registration Process

One of the core element for the development of the Lao enterprise registration system is to replace the *ex ante* enterprise registration process with an *ex post* procedure. This comes with the cancellation and/or change of some previously compulsory steps required to be undertaken by prospective investors intending to form a Lao legal entity as per details in the table below:

No.	Previous Enterprise Registration Process	New Enterprise Registration Process
1	Certificate of Office Address	– Cancelled –
2	Application for Enterprise Registration and Business Operation License	Application for Enterprise Registration
3	Registration of Article of Association	– Ex post procedure adopted –
4	Application for Tax Identification Number Certificate	– Cancelled –
5	Induction Session on Tax obligation and Delivery of Tax Identification Number	Induction Session on Tax obligation
6	Application for Permit to Craft Seals and Crafting of Company Seals	Crafting of Company Seals
7	Register company seals	– Cancelled –
8	Application for Approval of Company Signage Content and Crafting of Company Signage	Crafting of Company Signage
9	National Social Security Fund Registration	National Social Security Fund Registration
10	VAT registration	VAT registration

Reducing the number of required formalities, simplifying and streamlining remaining registration procedures have received particular attention by relevant authorities. Since 1 February 2019, the MOIC has taken initiatives in implementing several changes to the application process for enterprise registration, which is under its direct supervision. These include the cancellation of the enterprise name reservation form, the introduction of new simplistic forms for enterprise registration, the adoption of commitment to a process timeline of 15 days from the date of receipt of documents and limitation of the exercise of official authority in the application review process. One notable change to the process which renders it feasible for ERP, which, as acknowledged by the MOIC previously took 2-3 months to complete, can now be finalised within 15 days under the new process, is the adoption of the new enterprise registration certificate (“ERC”) format. The new ERC format will no longer specify the business activities of the newly registered enterprise. In the event that such business activities is classified as conditioned, controlled, or concession business under the law of Lao PDR, investors are instead given 90 days after the issuance of the ERC to secure a relevant business operation license (“BOL”) and provide the relevant enterprise registration office with an official copy.

The MOIC also collaborates with other relevant authorities, including sectors responsible for the issuance of BOL and governmental offices involved in the ERP, to encourage the provision of commitment, either written or verbal, from them in relation to the implementation of a transparent and time-efficient procedure for the relevant formalities under their jurisdictions.

### Reflection

No one can deny that the successful implementation of the ERP will afford more efficiency and simplicity to the previously lengthy and complicated process. Currently, it is still too early to judge whether the new process has achieved its purpose. The novelty of the process stands atop all others as the main reason rendering a fair and informed assessment on the process. The new ERP has recently been officially implemented on 1 February 2019 and the relevant authorities are still drafting and promulgating supplementary regulatory instruments to

accommodate this development. An example is Notification No. 0489/PSO.MOF on the issuance of a tax identification number (TIN) ("the Notification"), which was issued on 5 March 2019. The Notification confirms the abolishment of the TIN certificate after the implementation of the new registration process. Also, with the current co-operation among relevant authorities, especially in respect to the issuance of BOL, one will expect that sectoral specific regulations from other governmental offices will shortly be introduced.

The absence of a written commitment and the inconsistency between publically announced commitments made by authorities and written laws and regulations may also leave investors and operational officers in an uncertain state in determining their rights and obligations in the ERP. Despite the fact that MOIC expects that the new process will be capable of reducing the process timeline of enterprise registration to no longer than 40 days, currently, relevant governmental sectors are still working on creating a regime to support the implementation of the new registration process, and it is thus difficult to ascertain that the ministry-to-ministry commitment, especially ones without evidence in writing, are ultimately applicable in practice. Likewise, the claim that the registration process for company seals is no longer required is not endorsed by Decree No. 322/GOL on Seals.

The omission of the mentioning of indirectly relevant formalities in the ERP may also affect the accuracy of the process given that some can take considerable amount of time to complete. Examples of this, among others, include the police clearance process conducted on investors coming to invest in Lao PDR before the issuance of the ERC and application for capital importation certificate upon the importation of capital through a Lao commercial bank.

Last but not least, the formation of a Lao legal entity is ultimately commissioned with the commercial objective in mind. The fact that the process can be completed quicker and simpler will to a certain extent render it more attractive to invest in Lao PDR. However, it is important to note that currently the authority of MOIC and its delegates, to issue an ERC with business activities is particularly limited under the new process. This means that the majority of legal entities will be formed without the ability to engage in any business activities. With the current development in relation to the application for a BOL, it is unclear that the improvement to enterprise registration process alone can sufficiently be an indicator that Lao PDR has become an attractive venue for investment. Considering the above, one may say that the appropriate time to make a full assessment on the integrity of the new process may best be in 2020.

### Conclusion

The introduction of the new ERP serves as an indicator that Lao PDR strives to escape from being one of the most difficult venues to start and operate a business. No one can dispute that this is not a laudable effort worth the attention and support from international community and investors. However, the new process, despite demonstrating several remarkable improvements from the previous process, cannot be said to have fully matured. Continual attention and effort of relevant sectors to address the impending issues will be indispensable for final completion of a modernised and more effective new enterprise registration process.

If you have any questions or require any additional information, please contact [Tuchakorn Kitcharoen](#) or the ZICO Law Laos Partner you usually deal with.

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